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ABSTRACT

Focusing on the Student Right to Know and Campus Security Act (SRKCSA) of 1990, the First Amendment, and judicial issues related to disciplinary counseling, this document discusses legal issues for student development personnel not engaged in instruction and therefore falling outside of traditional academic rulings. The first section describes the SRKCSA, noting that the mandated and expensive program of publishing and distributing crime statistics has had little impact on campus crime or student behavior. The next section focuses on the First Amendment in the context of an academic environment, highlighting decisions in cases where the right to freedom of expression and association on campus and via E-Mail were in conflict with respect for racial, ethnic, and/or religious groups. The third section discusses judicial issues related to student disciplinary action, reviewing cases related to due process for students and regulation of off-campus conduct, while the fourth section focuses on disciplinary counseling and procedures of referral and efficient withdrawal of students suffering psychiatric disorders. Finally, four surveys of the value of crime statistics are reviewed, indicating a negative perception of the effectiveness of such statistics, and recommendations for increasing awareness of non-instructional lega' issues are provided. Contains 50 citations of works, cases, and stat tes. A statement on the rights and freedoms of students, a model student disciplinary code, and survey instrument from a study of disciplinary counseling personnel are appended. (KP)

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ED 388 335

A LEADERSHIP IMPERATIVE:

ADDRESSING LEGAL ISSUES

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INTRODUCTION

Preamble

"Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment o these goals. As members of the academic community, students should be encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Institutional procedures for achieving these purposes may vary from campus to campus, but the minimal standards of academic freedom of students outlined below are essential to any community of scholars.

Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility.

The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the academic community. Each college and university has a duty to develop policies and procedures which provide and safeguard this freedom. Such policies and procedures should be developed at each institution within the framework of general standards and with the broadest possible participation of the members of the academic community. The purpose of this statement is to enumerate the essential provisions for student freedom to learn."
(Joint Statement on Rights and Freedoms of Students) (2: p.13.)

For many years now community colleges have been concerned with legal issues. However, most of these have involved what may be termed "corporate" or financial issues. On the other hand, those of us in Student Development have been concerned with legal issues that involved our students. As Student Development professionals we have not had the luxury that our colleagues in Instruction have that use the "Doctrine of

Academic Extension". In other words, when academic credit is given for learning experiences, the courts have ruled in favor of the "experts", the College or University.

For purposes of this document our discussion is limited to four topical areas: The Student Right to Know and Campus Security Act, First Amendment issues, judicial issues including disciplinary counseling, , surveys and recommendations for change.

CAMPUS SECURITY ACT

The Student Right to Know and Campus Security Act of 1990 was signed into law by President Bush on November 8, 1990 and was further amended by the Higher Education Technical Amendments of 1991, The Higher Education Technical Amendments of 1992 and The Higher Education Technical Amendments of 1993. The three major dimensions of the Act and the Amendments are:

Title I - Section 103 that addresses the disclosure of program completion and persistence rates for specifically defined student cohorts;

Title I - Section 104 that addresses the disclosure of program completion and persistence rates for specifically defined cohorts of students receiving athletically-related student aid; and

Title II - Section 204 that addresses the reporting, to defined audiences, of campus crime statistics specifically defined in the Act and campus security policies.

Further guidance in implementing this Act can be found using the United States Department of Education's August 1991 "Dear Colleague" letter of July 10, 1992, Student Assistance General Provisions Proposed Rules, and the Final Regulations of the Family Educational Rights and Privacy Act published January, 1995.

Congress received impetus to enact this legislation due to rapes on college campuses and other violent crimes that had affected relatives and close friends of Congressmen. The issue had a lot of emotional play with national media coverage. Some cases discussed below helped to also provide impetus for the Act.

Using "The Principal of Business/Invitee in *Peterson v. San Francisco Community College District (1984),* the court held the college liable for a sexual attack on a student that occurred in the college parking lot." (6: p. 52.) In this case thick bushes and trees had become hiding places for assaults that had previously occurred and the college had not warned students regarding the incidents or trimmed nor removed the hiding places. The court explicitly noted the special relationship that existed was one "between a possessor of land and members of the public who enter in response to the landowner's invitation" (Peterson 1984, p. 1196) (6: p. 52.) And further the court stated, "In the enclosed environment of a school campus where students pay tuition and other fees in exchange for using the facilities, where they spend a significant portion of their time and may in fact live, they can reasonably expect that the premises will be free from physical defects and that school authorities will also exercise reasonable care to keep the campus free from conditions (that) increase the risk of crime.(Peterson 1984, p. 1201). (6: p.53.) In the Peterson case the California Supreme Court "ruled that the college had a duty to protect or warn students in the face of reasonably foreseeable attacks." (14: p. 91.) On the other hand, actions that are "not reasonably foreseeable and...cannot be reasonably anticipated do not result in liability, (Brown 1990,p. 2)" (6: p. 63.)

- All contemporary cases relative to campus crime and safety have a common theme of the special relationship between the student and the college. "A duty may arise...where (a) a special relation exists between the actor and the third person(that) imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other (that) gives the other a right to protection. (Peterson 1984, p. 1196.)" (6: p. 59.) Preventive measures that colleges utilize should take the form of education and warnings to the members of the campus community. Such measures include:

- A risk management program that responds to potential safety and security problems.
- Training programs for campus police and security personnel.
- Scheduling of evening classes with particular attention to the security and safety of students.
- Candid discussion and programming regarding prevention of, and responsibility in reporting crime.
- Seminars, lectures aimed at prevention of sexual assault, racial violence and gay bashing should be scheduled.

Further discussion of the implementation of the Campus Security Act centered around the need to notify all students and the intent of Congress in adoption of the Act. For the past three years campus crime statistics have been published and distributed. During that period seemingly no impact or, even worse, an increase in campus crime has occurred at some institutions. This questions the effectiveness of the distribution of campus crime information and statistics in crime prevention. One institution surveyed stated that they spend $20,000 a year just to mail the information to students with little or no positive effects. Concern was also expressed regarding interpretations of crime reporting. This is especially true at smaller institutions that do not have a police force or depend upon local law enforcement. Reports are sometimes generated by reporting alleged crimes to an administrative person on the campus.

As professionals we are advocates for safe and secure learning environments and in that light promote the reporting of campus crimes. However, we would rather spend the little money we do have in prevention efforts to meet the spirit of the law. Instead we find ourselves spending our funds on postage and publications to meet the letter of the law.

Another impact noted was the increase in reported incidences of crime especially in the area of sexual assault and date rape. It is believed that this increase in reporting is a direct result of preventive programming efforts aimed at crime prevention. In these cases you may find campuses with higher crime rates due to reporting that gives a false sense of crime increase. It was noted that four year colleges and universities with residence halls and Panhellenic organizations are much different than community colleges that on average have an older commuter student body. The suggestion was made that this would be an excellent topic for a dissertation and would benefit us in trying to recommend change for the better.

In 1991, President George Bush in his state of the union address, stated, "We must put an end to un-financed federal government mandates. If Congress passes a mandate it should be forced to pay for it, and balance the cost with a savings elsewhere." The mandate for this Act fits into this category.

Discussion continued as to whether the campus requirement to mail crime statistics is in the Act itself or is an interpretation of the Department of Education in the promulgation of

Rules. Agreement was reached that we should inform our colleagues and the Department of Education and Congress if necessary, that the letter of the law is too burdensome but that the spirit of the law is good educational practice. In other words, we can and should publish campus crime rates in our catalogs and /or handbooks, and provide crime prevention seminars.

FIRST AMENDMENT ISSUES

In this country the rights of the First Amendment are one of the most solidly and rigidly enforced rights by the Supreme Court. Many think that is what makes this country great and is the basis of the liberties for which generations of Americans fought and died. There are no simple solutions when you get into the First Amendment. Universities and Colleges, particularly, look foolish when they try to control these rights. University and College faculty cry "academic freedom" when such rights are contained in the classroom. Being "politically correct" today may not keep you out of court but will keep your public relations staff busy. In one local community the editor of the local newspaper wrote the college president asking why the college would allow advertising for condoms. The president wrote a letter back to the editor commenting on protection of his (editor's) right of freedom of speech (or the press), as well as the students.

One of the fundamental rights secured by the First Amendment is that of free, uncensored expression even on matters some may think are trivial, vulgar, or profane. As recently as 1994 in Johnston-Loehner v. O'Brien, 1994 (33) the court again determined that the free

speech rights of students had been violated by providing the superintendent total discretion in reviewing the content of materials that students distributed. The court followed the standard established in Tinker. In the Tinker case the court stated, "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." (50) In other words, only speech that causes or could cause substantial disruption may be prohibited by schools.

In Doe v. University of Michigan (22) a graduate student claimed the University policy was so broad that it violated his First Amendment right to free speech. The court agreed with the student. The court further stated that only certain types of speech, such as that to incite riots, would not violate the First Amendment. Just because the speech offended large numbers of people and the University disagreed with the ideas did not justify the school's policy. Also, in the university setting competing views are essential to the institution's educational mission. "While finding the University's motives "laudable', the court held that the University's policy was unconstitutional." (12:p. 3.) The court supported its rationale by addressing each of the four elements of the University Rule:

> **The first element of the UW Rule, which requires that the speech be racist or discriminatory, describes the content of the speech to be regulated but does not state that the speech must tend to cause a breach of the peace.**
>
> **The second element, which requires that the speech be directed at an individual, meets the requirement...that the speech be "directed to the person of the hearer." In addition, the second element makes it likely that the rule will cover some speech (that) tends to incite violent reaction. Nevertheless, this element does not require that the regulated speech always tend to incite such reaction and is likely to allow the rule to apply to many situations where a breach of the peace is unlikely to occur.**

The third element of the UW Rule requires that the regulated speech demean an individual's race, sex, religion, etc... Nonetheless, the third element...does not address the concerns of ...(all) the fighting words definition (words (that) by their very utterance tend to incite an immediate breach of the peace). Speech may demean an individual's characteristics without tending to incite that individual or others to an immediate breach of the peace.

The fourth element of the UW Rule requires that the prohibited speech create an intimidating, hostile, or demeaning environment. (Such an environment) certainly "disturbs the public peace or tranquillity...of a (university) community." However, it does not necessarily tend to incite violent reaction... (The term "hostile" covers nonviolent as well as violent situations... This court cannot properly find that an intimidating or demeaning environment tends to incite an immediate breach of the peace.
(UWM Post 1991, p. 1172) (6: p. 13.)

The right of freedom of association flows from the constitutional right of freedom of speech. The Court in Gay Student Services v. Texas A&M University (1984)(26) explained this by describing freedom of association as protecting the "right to join with others in the advocacy of beliefs or exercise of other rights protected by the First Amendment" (14: p. 6.) Further in Gay Activists Alliance v. Board of Regents of University of Oklahoma 1981, p. 1122(25) the court further stated that "No abridgment of association rights can be tolerated if the only competing interest is the university's opposition to the content of that expression. Where the denial of recognition is based on mere suspicion, unpopularity, and the fear of what might occur and is achieved by state action (that) burdens association rights resulting in the lessening of an organization's ability to effectuate legal purposes guaranteed freedoms have been violated." (6: p. 25.) Also that right to associate is not lost because some of the groups members have engaged

in illegal activities. Even when an organization promotes both legal and illegal philosophies, an individual of the group cannot be punished for being a member of that group.(50)

Another Lemon case is most important in that it is often cited as a basis for decision. The courts still use the three pronged test established in Lemon v. Kurtzman, 1971 (35). "First, the (government policy) must have a secular purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion...; finally, the (policy) must not foster "an excessive governmental entanglement with religion."(35)

A more recent case involved a policy established by the University of Washington that prohibited criticism of the campus radio station management on the air of KCMU. The court in Aldrich v. Knab upheld the volunteers and listeners in its decision that the "no-criticism" policy violated the First Amendment. (17)

In Rosenberger the United States Supreme Court stated: "More than once have we rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching government programs neutral in design." (50) The open forum for speech and to support various student enterprises including the publication of newspapers, in recognition of the diversity and creativity of student life." (50) In making this statement the Court simply has followed its line of reasoning in speaker ban cases.

This recent 5-to-4 decision handed down by the Supreme Court has stirred a great deal of interest and controversy on the part of educators and legal scholars concerning the administration student activity fees. The central issue in the case whether a grant from the Student Activities Fund to pay Wide Awake's (a campus Christian organization) printing expenses for their publication would violate the Establishment Clause of the Constitution. Some commentators hail this as new law that will have tremendous impact on higher education institutions. College administrators who examine the decision will find little that will change the manner in which we have been administering college funds over the past two decades or more. During the student dissent period of the 60's federal courts repeatedly informed colleges and universities that newspapers were public forums and although they were not required to have newspapers, if they did, they could not be censored or controlled by the administration. This decision resulted in some colleges making the student papers independent with various arrangements for independent funding and eliminating their eligibility for student activity fees. Some college papers began charging for the paper and relying on advertising revenue. It was at this time that many students had their first hands-on experience with capitalism. Interestingly, some doctoral research hypothesized that reliance on advertising changed editorial policy of many student run newspapers.

Subsequent to the newspaper cases decided by lower federal courts the United States Supreme Court handed down its decision in Widmar v. Vincent, 102 S. Ct. 269 (1981). Widmar centered on an evangelical Christian campus organization (Cornerstone) which held its on-campus meetings in classrooms and the student center. The University of Missouri at Kansas City board of curators had promulgated a regulation prohibiting the use of university buildings or grounds "for purposes of religious worship or religious teaching." Cornerstone was denied use of University facilities and sued the University. The case progressed to the Supreme Court and essentially the Court ruled that the groups' activities were protected by the free speech clause of the First Amendment. The Court stated that the University had violated the students' rights by placing content-based restrictions on their speech. "The basis for our decision is narrow. Having created a forum generally open to student groups, the University seeks to enforce a content-based exclusion of religious speech. Its exclusionary policy violates the fundamental principle that a state regulation of speech should be content-neutral, and the University is unable to justify this violation under applicable constitutional standards." (50) The Rosenberger decision cites Widmar extensively in explaining why student activity fees had to be available to Wide-Awake as well as all other student groups. Most student activity fees programs are administered in a totally neutral fashion already and Rosenberger requires little change to existing practices in most institutions policies. Of note is the Court's statement that: "The fee is mandatory, and we do not have before us the question whether an objecting student has the First Amendment right to demand a pro rata return to the extent the fee is expended for speech to which he or she does not subscribe." (50) Many

colleges have already addressed this issue with regard to the opportunity of students to opt out of such things as the assessment for Public Interest Research Groups. In essence, the Rosenberger decision will have little impact on the manner in which colleges have been administering their student activity fees.

A case involving both speech and association also illustrates protections guaranteed by the First Amendment. (Iota Xi Chapter of Sigma Chi Fraternity, et. al. v. George Mason University, et.al., 1991. (32) This case involved a skit acted by the fraternity that was offensive to both women and members of the African American community. The University disciplined the members of the fraternity because of the "offensive" activity. The court ruled in favor of the students stating that the members did not violate any time, place or manner regulations according to University policy. In other words, the First Amendment does not recognize exceptions for bigotry, racism, and religious intolerance. Speech and association on a college campus has full protection of the First Amendment, actions do not. College administrators not only may but must prevent disruption on campus to maintain a learning environment but in doing so they must also justify any denial of free speech and/or association. The Supreme Court has recognized this balance. "We...hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct ." (Healy, 1972, p. 2352)(30) (6: p.34.) In other words, a group

may express its criticism about the college and that they should run the college but to make plans to takeover the college moves the group into action and is probably not protected.

A real concern expressed by many is that policies restricting speech really "do not deal with "root" causes of racism, sexism or other forms of harassment (Baruch 1990, Gunther 1990; O'Neil 1991b; Strossen 1990). Education is really the tool to destroy bigotry and prejudice not rules and regulations. Unfortunately, when individuals that use hate speech are disciplined, they become First Amendment martyrs and the real issues of offensive speech are lost and not addressed. "Respect for diversity will not occur unless it is grounded in a solid foundation of shared values. For most Americans, one of those values is appreciation for freedom of expression and freedom of association." (10: p. 238.) Instead of providing martyrs we need to make these bigots into First Amendment practitioners. "When bigots assert they have a right to be heard, we should remind them that they have a corresponding responsibility to listen." (10: p.238.)

The college campus should be a place for the free expression of thoughts and ideas. Unfortunately some are hateful but fortunately most are ennobling. As responsible campus leaders we need to capture the ennobling ones. By developing orientation programs, seminars, forums and workshops for all members of the academic community we should be able to diffuse such attitudes of bigotry. "Respect for racial, ethnic, religious and other diversity should be a threshold qualification for membership in the community of

scholars and students. And tolerance for expression of ideas of every sort is essential to the academic enterprise. Can the best and the brightest find principled ways to reconcile these two essentials?" (Norton, 1990) (2: p. 65.)

At the University of South Carolina students, faculty and staff discussed shared values of the university and through this process developed "The Carolinian Creed".

> **"The community of scholars at The University of South Carolina is dedicated to personal and academic excellence. Choosing to join the community obligates each member to a code of civilized behavior. As a Carolinian...I will practice personal and academic integrity; I will respect the dignity of all persons: I will respect the rights and property of others; I will discourage bigotry, while striving to learn from difference in people, ideas, and opinions; I will demonstrate concern for others, their feelings, and their need for conditions which support their work and development. Allegiance to these ideals requires each Carolinian to refrain from and discourage behaviors which threaten the freedom and respect every individual deserves." (2: p. 92.)**

Such an endeavor is recommended to any institution to emulate since from such a creed could flow a code of student conduct that all would support.

The ACLU has developed the following actions to promote and address the issues we have discussed above.

> **"a) to utilize every opportunity to communicate through its administrators, faculty, and students its commitment to the elimination of all forms of bigotry on campus;**
>
> **b) to develop comprehensive plans aimed at reducing prejudice, responding promptly to incidents of bigotry and discriminatory harassment, and protecting students from any such further incidents;**

c) **to pursue vigorously efforts to attract enough minorities, women and members of other historically disadvantaged groups as students, faculty members and administrators to alleviate isolation and to ensure real integration and diversity in academic life;**

d) **to offer and consider whether to require all students to take courses in the history and meaning of prejudice, including racism, sexism, and other forms of insidious discrimination;**

e) **to establish new-student orientation programs and continuing counseling programs that enable students of different races, sexes, religions, and sexual orientations to learn to live with each other outside the classroom;**

f) **to review and, where appropriate, revise course offerings as well as extracurricular programs in order to recognize the contributions of those who art, music literature and learning have been insufficiently reflected in the curriculum of many American colleges and universities;**

g) **to address the question of *de facto* segregation in dormitories and other university facilities; and**

h) **to take such other steps as are consistent with the goal of ensuring that all students have an equal opportunity to do their best work and to participate fully in campus life.....**

This policy is issued in connection with, and is intended as an interpretation and enhancement of, the binding resolution on racist speech adopted at the 1989 Biennial Conference. That resolution provides: The ACLU should undertake educational activities to counter incidents of racist, sexist, anti-Semitic, and homophobic behavior (including speech) on school campuses and should encourage school administrators to speak out vigorously against such incidents. At the same time the ACLU should undertake educational activities to counter efforts to limit or punish speech on university campuses." (13: p. 572.)

A new medium to review that has yet to be addressed by the United States Supreme Court is the use of electronic medium. The Office of Civil Rights recently investigated a case regarding Title IX of the Educational Amendments of 1972 concerning the use of

electronic bulletin boards at Santa Rosa Junior College. Two gender segregated electronic bulletin boards had been created. The individuals filing the case alleged that: 1) they should not be excluded from the other gender bulletin board; 2) no grievance procedure was provided to them; 3) a hostile environment toward woman was created by the messages on the "Men Only Conference"; and 4) the College retaliated against the women because they complained. "The College asserted that SOLO is analogous to a newspaper or a conversation between students in a public place. As such, SOLO is a public forum...and should enjoy a heightened level of First Amendment protections..... However, the US Supreme Court has recognized that when a school operates a facility for limited use, it may be considered a limited public forum, and thus subject to greater restrictions on expression than a traditional public forum.... In this case, SOLO has more of the characteristics of the limited public forum than the public forum. OCR's investigation revealed that the college limited access to SOLO to persons "with an educational purpose," and routinely asserted control over the content of messages on SOLO. The professor appointed moderators to conferences that he felt required supervision." (37: p.6.)

As of this writing the Office of Civil Rights anticipates finding that: 1) the establishment of gender segregated electronic bulletin board conferences; 2) the provision of inadequate grievance procedures; and 3) one woman who complained of retaliation appears to be a violation of Title IX. (letter to Dr. Robert F. Agrella, President, Santa Rose Junior College, June 23, 1994.) (37)

Electronic mail has given people in education and lawyers and judges a 'fit'. A decision of the Supreme Court of California is illustrative. The issue was the use of copyright software by the state universities. The suit was dismissed because California institutions have sovereign immunity, and therefore, cannot be sued for copyright violations. You might say this is a cavalier way of using sovereign immunity. It appears what the judge is really saying is that we cannot figure out who owns what, and what is shareware and what is software. The testimony in the transcripts got so convoluted, that nobody was profiting from it. It was just being used in the classrooms, and nobody could tell who owned it and who was profiting from it, and the judges finally said—it's like that movie—Diplomatic Immunity, can't do anything about it; Sovereign Immunity, can't do anything to them. The case has never been back in court .

Student access to the Internet and its use is another issue that needs wide discussion. Do we need to write a code or policy regarding that access and what can be sent over it? What infringements of the First Amendment may occur? This is the issue of today. As students are able to move electronically outside the institution should we "control" that movement and if so in what way and how? There do not appear to be any rules at this time. We appear to make them up as we go along. We should not make the same mistakes we made in the 60's, that is responding to riots, etc. by making up disciplinary codes as unofficial infractions occurred. We have seen items on E-Mail and the Internet

that suggest sexual harassment, that portray nudity, that could be viewed as hostile environments. Again what is the impact of codes as they relate to the First Amendment?

In light of this we also recognize the difficulty of determining exactly who the user is. Even with passwords and access codes, unattended computers are often readily available. Again this is where student affairs administrators have a opportunity to provide a real impact.

At this point the question really becomes more of an ethical one than a legal one. For example hate speech is more of an ethical question and value judgment than a legal discipline issue. What about hurting people? Is that right or wrong, never mind that it is or is not legal. We criticize ourselves in psychology and education research studies that are based on quantitative data. We never can conclude that counseling theories do any good. It's probably because we are asking the wrong questions and applying the wrong analyses. That's why qualitative research is receiving such acclaim now because it is getting into how people think and feel. So in the hate speech arena, we would suggest that the real issue is ethics. Get away from the law, get away from enforcing conduct. Go about enlightening them, educating them—why you don't want to live in a society that does these things to other human beings. Mark Twain said, "it's an interesting point to realize that lawyers never go with the law themselves for satisfaction." The law doesn't solve much. For years , deans have solved more problems on campuses than lawyers. In courts, the enlightened attorneys realize this. We are an educational institution, and

whenever we can prove what we are doing is educational, the courts will remove themselves and will not enforce laws on us.

In other words, those of us who are sitting and waiting for someone to write the best hate speech policy should instead be looking at what are the ethics of the issue. This is the Minnesota point of view from E. G. Williamson (15) combining discipline with counseling and education. This is another area of opportunity for us in the Student Development area. Ten years ago, we were talking about high touch in conjunction with high-tech. Today we should be talking about ethics in conjunction with legality. We could do so in a very proactive, positive way. For example, **Welcome to our E-mail system. This is to remind you that this is to be used for friendly communication recognizing the sensitivities and values of our fellow human beings. Thank you.** This is an opportunity for us in terms of working with our management information systems people on more than installation of records systems.

Administrators should carefully look at their codes of conduct in light of First Amendment rights and should seriously consider these rights in conjunction with the administrators role in protecting the learning environment and mission of the institution.

During the first half of this century, the doctrine of *in loco parentis* authorized colleges and universities to make almost unlimited decisions affecting their students. Attendance at any institution of higher education was a privilege as noted in Gott v. Berea College, 1913 (28) and Hamilton v. Regents of the University of California, (29). A good enough reason to dismiss a student involved not being "a typical Syracuse girl" (Anthony v. Syracuse University,1928). (18)

A marked change in the attitude that college should be a right not a privilege began with the Dixon v. Alabama State Board of Education,1961 (21) case. In this case students had been expelled without a hearing. In its decision the court described what were acceptable expulsion procedures:

> **"The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case...In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He would also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled." (14: p. 65.)**

The due process procedures over the past 30 years have developed from judicial interpretations. "This process of judicial inclusion and exclusion has gradually defined the rights and responsibilities of students in disciplinary situations." (2: p. 98.) The *Joint Statement on Rights and Freedoms of Students* in Appendix A of this document included procedures that are not unlike the due process procedures developed by the courts. Fair play remains the same.

During the last half of the century, beginning with the social changes of the 1960's, colleges and universities have seen a major change in this doctrine. Such cases as Healy v. James,1972 (30), Widmar v. Vincent, 1981 (50), and Bradshaw v. Rawlings,1979 (19) are illustrative of the change. Institutions now publish reasonable rules and, upon their violation, a student receives due process. For an excellent example of a model code of conduct read E. Stoner & K. Cerminara, Harnessing the "Spirit of Insubordination": A Model Student Disciplinary Code, 17 J. College & University Law 89. (11) ((Reprinted without footnotes by permission of E. Stoner in Appendix. B.)

For further review, cases that may be studied include: Esteban v. Central Missouri State College ,1967 (23), a case that required notification to the student. Nash v. Auburn University, 1987 (36), a case that established cross examination of witnesses was not a essential part of due process and therefore not required. French v. Bashful,1969 (24), a case that provided the right to counsel for a student was necessary especially if the institution was represented by counsel. In Gorman v. University of Rhode Island, 1988

(27) the courts provided that collegiate cases are hearings not criminal trials. "In fostering and insuring the requirements of due process.. the courts have not and should not require that a fair hearing is one that necessarily must follow the traditional common law adversarial method. Rather, on judicial review the question presented is whether , in the particular case, the individual has had an opportunity to answer, explain, and defend, and not whether the hearing mirrored a common law criminal trial." (14: p.67.)

Another area of discussion regarding judicial matters is off campus conduct. The Supreme Court has never decided a case on issues relative to off campus conduct. Lower court cases do exist, however, on the institutional authority over the off-campus rights and responsibilities of students. "One of the most widely cited statements arising out of the civil rights era regarding the authority of the college to regulate off-campus conduct appears in the U. S. District Court General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education. (45 FRD 133, W.D. MO, 1968. p. 145) p.71. (2: p. 76.) In Krasnow v. Virginia Polytechnic Institute,1977 (34) the court stated that the institution did have authority over off campus conduct "when relevant to any lawful mission, process, or function of the institution". (14: p.71-72)

As in the case of psychiatric withdrawal, regulation of off-campus conduct must be the decision of the college as a matter of policy. The college must clearly delineate the policy, the specific rules that will apply, and how violations of public law will impact the judicial

process on campus. Also the institution must show the relationship between its mission and the delineated policy. Since most community colleges are commuter institutions and serve an older adult population it appears that the construction of such codes would not be in our best interest. What is in our best interest is to develop, if not already accomplished , strong partnerships with local police departments and law enforcement agencies in order to maintain the environment for learning in a free context.

In summary, publish codes of conduct, write them clearly and concisely, and upon allegation of violations provide due process for determination of sanctions. One suggestion in publishing codes was to put them on E-mail so that the student must read them prior to entering their access code to get into the system.

DISCIPLINARY COUNSELING

Information published in 1968 is instructive as well as complementary of the discussion of the committee relative to the educative process of discipline.

> **"The discipline of students in the educational community is, in all but the case of irrevocable expulsion, a part of the teaching process. In the case of irrevocable expulsion for misconduct, the process in not punitive or deterrent in the criminal law sense, but the process is rather to determine that the student is unqualified to continue as a member of the educational community. Even then, the disciplinary process is not equivalent to the criminal law processes of federal and state criminal law. For, while the expelled student may suffer damaging effects, sometimes irreparable, to his educational, social and economic future, he or she may not be imprisoned, fined, disenfranchised, or subjected to probationary supervision. The attempted analogy of student discipline to criminal proceedings**

against adults and juveniles is not sound." ***General order on judicial standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education,*** **45 FRD 133, W.D. Mo. 1968, p. 142. p 93 (2: p.93)**

Basically we are discussing the point of view of E.G. Williamson. (15). Students are responsible for their behavior and part of the duty of the institution is to hold them responsible for their behavior. That in itself is a learning experience. Combining discipline with counseling and education truly works.

However, discussions with clinical psychologists and counselors engender heated debate in this area. In other words, requiring or forcing an individual to participate in counseling or counseling sessions will not be productive. Information in our experience however, does not bear this out. Behaviors have improved after counseling. A lot more problems seem to be solved this way rather than writing or invoking codes and policies. One example is to establish a policy that when an instructor has what he or she perceives to be a disruptive or behavior problem in the classroom, he or she should contact counseling first. During this time the problem can be mediated or resolved.

The law appears to be moving toward what we as deans and counselors of colleges do is mediation of problems. Arbitration is the growing area of the law. Exactly what people are trying to do is settle their differences without going to court or without applying codes and laws.

Yet what recourse does an institution have when arbitration or mediation does not seem to be the answer? Given heightened awareness relative to psychiatric disorders and the stigma associated with findings of mental or emotional disorder how does an institution handle behavioral manifestations at the institution? From discussion of committee members, while vague, institutions currently use psychiatric referral under contract with the institution, referral to a nearby University psychiatric clinic or mental health facility, and/ or referral to crisis centers in the community.

The Academic community should develop procedures of referral and efficient withdrawal for students suffering from such disorders so as to avoid use of the disciplinary process that might very well have a detrimental effect on the student. "The use of mandatory psychiatric or psychological withdrawals should be avoided whenever possible, since the stigma associated with a finding of some sort of mental or emotional disorder can be very damaging. Basically, students who are merely eccentric or who simply "cause concern" to others should not be subject to mandatory withdrawal. Furthermore, if a student has violated institutional disciplinary regulations, a mandatory withdrawal should be initiated only if the student lacks the capacity to respond to the disciplinary charges, or does not know the nature and wrongfulness of the acts in question. Also, in instances of threatened or attempted suicide, it is recommended that students be subject to mandatory withdrawal only if they are suffering from a serious mental disorder which is being exacerbated in the campus environment." (9: p.61.)

At this point it is instructive to review the case of Horowitz v. Missouri Board of Curators, 1981 (31). This case involved a third year medical student with a master's degree in Psychology, Phi Beta Kappa, straight A's in medical school who was dismissed from medical school for hygienic reasons. The case ended with the United States Supreme Court ruling in favor of the institution. The Court, in very strong language, said that getting a college degree entails more than passing pencil and paper tests. She was given the due process due her because it was an academic matter where different standards apply. In other words, medically or administratively withdrawing a student because they can not function as a student or they're a detriment to the learning environment is permissible under Horowitz. This can be accomplished unless pending proof from the student that he or she can function and benefit from their education. If the proof is not provided, a discipline hearing is not required. If fact, if you have a discipline hearing the case is taken out of the academic realm and Horowitz no longer applies. It is instructive to remember that this is a case decided by the United States Supreme Court and hence applies across the land!!

If institutions do wish to design a policy regarding mandatory psychological or psychiatric withdrawals, it is strongly recommended that the institution proceed very cautiously and in concert with legal consul. Such policies should also be influenced by existing state statutes, and the attitude of police and psychiatrists regarding guardianship in your community.

SURVEYS

A survey of the community colleges relative to the value of campus crime statistics in the State of Florida was completed in early 1995. In response to the question, 'To the best of your knowledge, does there appear to have been a decline in campus crime that could be attributed to the crime statistics distribution?' all twenty-one of the colleges responded NO.

Miami Dade Community College distributed a survey to its students orientation classes. Ninety seven percent of them indicated that the information received from the Safety and Security Report of Miami Dade had no effect on their plans. The results suggested that there have been no behavioral changes on the part of students as a result of the information received.

Another survey authorized by American College Testing and conducted by Kenneth B. Hoyt, Project Director, Kansas State University on May 1994 received responses from 13,698 people on commuter campuses.

Of these respondents, 43.8% felt very safe, 51% felt safe, 3.7% felt unsafe and 1.1% felt very unsafe. At the 1995 Association for Student Judicial Affairs Annual Conference, the results of a "Decision Perspective Survey" were discussed. The survey was completed by

student affairs practitioners who ranked their decision making process from a legal perspective and an educational/developmental perspective. They were also asked to rank that process for today and for three years ago. (50)

Members of the Student Development community were surveyed in six States relative to disciplinary counseling issues. Surveys in Appendix C were distributed to the Dean and the Director/Chairperson of Counseling. Upon preliminary data review the following trends and issues appear to have emerged. One half of the administrators responsible for discipline and the Counseling Center Director report an increase in disciplinary cases referred to them in the past five years. The main factors to which the increase is attributed are a more diverse student population, more students with social, behavioral and attitudinal needs, more students with a mental disability, absence of available counseling in communities, and establishment of a disciplinary action system which includes counseling for various kinds of cases. Both reported the most referred category for disciplinary counseling concerns conflict behavior between students and between students and staff/faculty. Many, if not most of the reporting counseling directors do not find any organizational conflict or ethical dilemmas presented by the counseling staff doing disciplinary counseling. Their dilemma seemed to be staff and faculty expectation for counselors to "fix" the problem or predict future behavior. Complete results will be discussed at the Interassociation Conference in October, 1995.

RECOMMENDATIONS

The research to date, surveys, and discussions have lead us to provide the following recommendations:

Graduate school professors should encourage their students to write dissertations on these issues. Two specific topics could be the impact of the Campus Crime and Right to Know Act on colleges and universities and its students and the use or abuse of electronic medium as it relates to First Amendment Rights.

Colleges and universities should publish crime rates in our catalogs and/or handbooks and provide crime prevention seminars. While we concur with the spirit of the law we find the letter of the law burdensome. In that light, we recommend appropriate legislative and executive branch contact to change the Campus Crime Act relative to publication and postage requirements, etc.

We recommend the National Council of Student Development establish a task force to draft a policy that institutions might adopt relative to use/abuse of the electronic medium. Such a policy should be drafted in light of First Amendment rights, ethical/legal issues, and questions of hostile environments. In the meantime, we

suggest that student affairs professionals take a leadership role on their campuses in shaping the adoption of guidelines for use of electronic medium.

Codes of student conduct need to be clearly published and available. In light of the availability of electronic medium to many of our students, we recommend publishing codes on our systems so that the student must read them prior to entering their access code to enter the system.

Use of disciplinary counseling and mediation is highly recommended especially relative to perceived classroom disruption. This is especially true in the case of possible psychiatric referral and medical/administrative withdrawal. We strongly recommend that institutions have in place a psychiatric referral source whether a community agency, clinic or individual.

Each institution should develop and nurture strong partnerships with local law enforcement agencies rather than establish off campus conduct codes. This should assist us in maintaining the environment for learning in a free context.

We recommend to the National Council for Student Development the establishment of a national library containing good policies and procedures that institutions have adopted that have meet the test of time.

In summary, it is a leadership imperative that we develop and maintain strong partnerships and cooperative efforts among attorneys, student affairs professionals, and community resources to provide the environment necessary for learning so our students are successful in reaching their goals.

SELECTED BIBLIOGRAPHY

AND CITED REFERENCES

ARTICLES, BOOKS

1. **Amada, Gerald, Ph. D. Coping with the Disruptive College Student: A Practical Model. Asheville, NC: College Administration Publications, Inc., 1994.**
2. **Bryan, William A. and Mullendore, Richard H. *"Rights, Freedoms, and Responsibilities of Students".* New Directions for Student Services. Number 59, Fall, 1992. San Francisco, CA: Jossey-Bass Publishers, 1992**
3. **Coomes, Michael D. and Gehring, Donald D. " *Student Services in a Changing Federal Climate".* New Directions for Student Services. Number 68, Winter,1994. San Francisco, CA: Jossey-Bass Publishers, 1994.**
4. **Delgado, Richard and Stefancic, Jean. *"Overcoming Legal Barriers to Regulating Hate Speech on Campuses.* The Chronicle of Higher Education. August 11, 1993. Washington, D. C.: The Chronicle of Higher Education, Inc., 1993.**
5. **Gates, Jr., Henry Louis. *"Let Them Talk".* The New Republic,September 20 & 27, 1993. Washington, D. C.: The New Republic, Inc., 1993.**

6. Gibbs, Annette. *"Reconciling Rights and Responsibilities of Colleges and Students, Offensive Speech, Assembly, Drug Testing, and Safety."* Report Five - 1992 ASHE-ERIC Higher Education Reports. Washington, D. C.: The George Washington University, 1992.

7. Lawrence III, Charles R. "If He Hollers Let Him Go: Regulating Racism Speech on Campus". Duke Law Journal, Vol. 1990: 375.

8. O'Neil, Robert M. *"Point of View"* The Chronicle of Higher Education, February 16, 1994. Washington, D. C.: The Chronicle of Higher Education, Inc., 1994.

9. Pavela, J. D. The Dismissal of Students With Mental Disorders: Legal Issues, Policy Considerations and Alternative Responses. Asheville, NC: College Administration Publications, Inc., 1985.

10. Stone, Gerald L. and Lucas, Julie. *"Disciplinary Counseling in Higher Education: A Neglected Challenge".* Journal of Counseling & Development, Volume 72. January/February, 1994.

11. Stoner II, Edward N. and Cerminara, Kathy L. *"Harnessing the "Spirit of Insubordination": A Model Student Disciplinary Code".* Journal of College and University Law, Volume 17, Number 2, 1990.

12. Strossen, Nadine. *"Legal Scholars Who Would Limit Free Speech".* The Chronicle Of Higher Education, July 7, 1994. Washington, D. C.: The Chronicle of Higher Education, Inc., 1994.

13. Strossen, Nadine. *"Regulating Racist Speech on Campus: A Modest Proposal?"* Duke Law Journal. Volume 1990: 484.

14. Weeks, Kent M. Student Affairs Decisions and the Law Public Colleges. Nashville, TN: College Legal Information, Inc. 1994.

15. Williamson, E.G. Student Personnel Services in Colleges and Universities. New York: McGraw-Hill. 1961.

16. Woolley, Rosemary, Ph.D. "A Leadership Imperative: Complying with the Student Right To Know and the Campus Security Act". Presented at Leadership 2000, San Diego, CA. July, 1994.

CASES CITED

17. Aldrich v. Knab 858 F. Supp 1480 (1994).
18. Anthony v. Syracuse University 224 A. D. 487, 231 NY s435 (1928).
19. Bradshaw v. Rawlings 612 F 2d 135. 464 F. Supp 175. 446 US 909 (1979).
20. Chess v. Widmar 635 F2d 1310. 480 F. Supp 907 (1980).
21. Dixon v. Alabama State Board of Education 294 F. 2d 150 (5th Cir.) Cert. denied, 368 US 930 (1961).
22. Doe v. University of Michigan 721 F. Supp 852 (1989).
23. Esteban v. Central Missouri State College 415 F2d 1077 (8th Cir.1969).
24. French v. Bashful 425 F2d 182 303 F. Supp 1333 (1969).
25. Gay Activists Alliance v. Board of Regents of University of Oklahoma 638 P.2d 1116 (Okla. 1981).
26. Gay Student Services v. Texas A&M University 737 F. 2d 1317 5th Cir 1984) Cert. denied, 471 US 1001 (1985).
27. Gorman v. University of Rhode Island 646 F Supp 799, aff in park rev in part 837 F. 2d 7 (1988).
28. Gott v. Berea College 156 KY 376 (1913)
29. Hamilton v. Regents of the University of California 293 US 245 (1934).
30. Healy v. James 408 US 169 (1972).
31. Board of Curators of the University of MO v. Horowitz 98 S.Ct. 948 (1978).
32. Iota Xi Chapter of Sigma Chi Fraternity, et. al. v. George Mason University, et. al. (E. Dist. Va. civil act 91-785A (1991).

33. Johnston-Loehner v. O'Brien, 859 F. Supp. 575 (M. D. FL 1994.)

34. Krasnow v. Virginia Polytechnic Institute 551 F 2d 591 414 F Supp 55 (1977).

35. Lemon v. Kurtzman 403 US 602 (1971).

36. Nash v. Auburn University 812 F2d 655 (1987).

37. Office of Civil Rights Case, Docket Number 09-93-2202. "Title IX and the Electronic Bulletin Board of Santa Rosa College" (1994).

38. Peterson v. San Francisco Community College District CA 685 P 2d 1193 205 CA Rptr 842 (1984).

39. Ronald W. Rosenberger, et.al; Petitioners v. Rector & Visitors of the University of Virginia, et.al, 115, S. Ct. 2510 (1995).

40. Tinker v. Des Moines Independent Community School District, 393 U. S. 503-08 (1969).

41. United States v. Lemon 723 F. 2d 922 632 F Supp 431 232 USApp DC 396 (1983).

42. Widmar v. Vincent USMO 102 S.Ct. 278 454 US 263 70 Led 2d 440 (1981).

CONFERENCES

43. 1995 Association for Student Judicial Affairs Annual Conference. Clearwater Beach, FL. February, 1995.

44. National Conference on Law and Higher Education, Issues in 1994. Clearwater Beach, FL: Stetson University College of Law, February, 1994.

45. National Conference on Law and Higher Education, Issues in 1993. Clearwater Beach, FL: Stetson University College of Law, February, 1994.

STATUTES AND REGULATIONS

46. P. L. 101-542 - The Student Right to Know and Campus Security Act of 1990 as Amended by the Higher Education Technical Amendments of 1991. (P.L. 102-26)

47. P. L. 102-325 - The Higher Education Technical Amendments of 1992.

48. P. L. 103-208 - The Higher Education Technical Amendments of 1993.

49. Department of Education 34 CFR Part 99. RIN 1880AA57. Family Educational Rights and Privacy. Final Regulations. January, 1995.

50. "General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education." 45 FRD 133, W.D. MO 1968.

Appendix A

Joint Statement on Rights and Freedoms of Students

In June 1967 a joint committee, comprising representatives from the American Association of University Professors, the United States National Student Association (now the United States Student Association), the Association of American Colleges, the National Association of Student Personnel Administrators, and the National Association of Women Deans and Counselors (now the National Association for Women in Education),formulated the "Joint Statement" published below. The "Joint Statement" was endorsed by each of its five national sponsors as well as by a number of other professional bodies. The governing bodies of the Association of American Colleges and the American Association of University Professors, acting respectively in January and April 1990, adopted several changes in language in order to remove gender-specific references from the original text.

In September 1990 and September 1991 an interassociation task force met in Washington, DC, to study, preserve, interpret, and update the Joint Statement. Members of the task force agreed that the "Joint Statement" has stood the test of time quite well and provides an excellent set of principles for institutions of higher education. As the twenty-fifth anniversary of the "Joint Statement" approached (1992) the task force developed a set of interpretive notes to reflect changes in law and higher education that occurred after 1967. These interpretive notes appear below and are noted within the original text. Participating associations and their representative(s) are listed at the end of the document.

Preamble

Academic institutions exist for the transmission Of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals. As members of the academic community, students should be encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Institutional procedures for achieving these purposes may vary from campus to campus, but the minimal standards of academic freedom of students outlined below are essential to any community of scholars.

Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community.1 Students should exercise their freedom with responsibility.

The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the academic community. Each college and university has a duty to develop policies and procedures which provide and safeguard this freedom. Such policies and procedures should be developed at each institution within the framework of general standards and with the broadest possible participation of the members of the academic community. The purpose of this statement is to enumerate the essential provisions for student freedom to learn.

I. Freedom of Access to Higher Education

The admissions policies of each college and university are a matter of institutional choice provided that each college and university makes clear the characteristics and expectations of students which it considers relevant to success in the institution's program.2 While church related institutions may give admission preference to students of their own persuasion, such a preference should be clearly and publicly stated. Under no circumstances should a student be barred from admission to a particular institution on the basis of race.3 Thus, within the limits of its facilities, each college and university should be open to all students who are qualified according to its admission standards. The facilities and services of a college or university should be open to all of its enrolled students, and institutions should use their influence to secure equal access for all students to public facilities in the local community.

II. In the Classroom

The professor in the classroom and in conference should encourage free discussion, inquiry, and expression. Student performance should be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.

A. Protection of Freedom of Expression

Students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.

B. Protection Against Improper Academic Evaluation

Students should have protection through orderly procedures against prejudiced or capricious academic evaluation.4 At the same time, they are responsible for maintaining standards of academic performance established for each course in which they are enrolled.

C. Protection Against Improper Disclosure

Information about student views, beliefs, and political associations which professors acquire in the course of their work as instructors, advisers, and counselors should be considered confidential. Protection against improper disclosure is a serious professional obligation. Judgments of ability and character may be provided under appropriate circumstances, normally with the knowledge or consent of the student.

III. Student Records

Institutions should have a carefully considered policy as to the information which should be part of a student's permanent educational record and as to the conditions of its disclosure. To minimize the risk of improper disclosure, academic and disciplinary records should be separate, and the conditions of access to each should be set forth in an explicit policy statement. Transcripts of academic records should contain only information about academic status.

Information from disciplinary or counseling files should not be available to unauthorized persons on campus, or to any person off campus without the express consent of the student involved except under legal compulsion or in cases where the safety of persons or property is involved. No records should be kept which reflect the political activities or beliefs of students. Provisions should also be made for periodic routine destruction of noncurrent disciplinary records. Administrative staff and faculty members should respect confidential information about students which they acquire in the course of their work.4

IV. Student Affairs

In student affairs, certain standards must be maintained if the freedom of students is to be preserved.

A. Freedom of Association

Students bring to the campus a variety of interests previously acquired and develop many new interests as members of tile academic community. They should he free to organize and join associations to promote their common
interests.

1. The membership, policies, and actions of a student organization usually will he determined by vote of only those persons who hold bona fide membership in the college or university community.

2. Affiliation with an extramural organization should not of itself disqualify a student organization from institutional recognition.

3. If campus advisers are required, each organization should be free to choose its own adviser, and institutional recognition should not be withheld or withdrawn solely because of the inability of a student organization to secure an adviser. Campus advisers may advise organizations in the exercise of responsibility, but they should not have the authority to control the policy of such organizations.

4. Student organizations may be required to submit a statement of purpose, criteria for membership, rules of procedures, and a current list of officers. They should not be required to submit a membership list as a condition of institutional recognition.

5. Campus organizations, including those affiliated with an extramural organization, should be open to all students without respect to race, creed, or national origin, except for religious qualifications which may be required by organizations whose aims are primarily sectarian.7

B. Freedom of Inquiry and Expression

1. Students and student organizations should be free to examine and discuss all questions of interest to them, and to express opinions publicly and privately. They should always be free to support causes by orderly means which do not disrupt the regular and essential operation of the institution.

   At the same time, it should be made clear to the academic and the larger community that in their public expressions or demonstrations students or student organizations speak only for themselves.

2. Students should be allowed to invite and to hear any person of their own choosing. Those routine procedures required by an institution before a guest speaker is invited to appear on campus should be designed only to insure that there is orderly scheduling of facilities and adequate preparation for the event, and that the occasion is conducted in a manner appropriate to an academic community. The institutional control of campus facilities should not be used as a device of censorship. It should be made clear to the academic and larger community that sponsorship of speakers does not necessarily imply approval or endorsement of the views expressed, either by the sponsoring group or by the institution.8

C. Student Participation in Institutional Government

As constituents of the academic community, students should be free, individually and collectively, to express their views on issues of institutional policy and on matters of general interest to the student body. The student body should have clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs.9 The role of the student government and both its general and specific responsibilities should be made explicit, and the actions of the student government within the areas of its jurisdiction should be reviewed only through orderly and prescribed procedures.

D. Student Publications

Student publications and the student press are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large.

Whenever possible the student newspaper should be an independent corporation financially and legally separate from the college or university. Where financial and legal autonomy is not possible, the institution, as the publisher of student publications, may have to bear legal responsibility for the contents of the publications. In the delegation of editorial responsibility to students, the institution must provide sufficient editorial freedom and financial autonomy for the student publications to maintain their integrity of purpose as vehicles for free inquiry and free expression in an academic community.

Institutional authorities, in consultation with students and faculty, have a responsibility to provide written clarification of the role of the student publications, the standards to be used in their evaluation, and the limitations on external control of their operation. At the same time, the editorial freedom of student editors and managers entails corollary responsibilities to be governed by the canons of responsible journalism, such as the avoidance of libel, indecency, undocumented allegations, attacks on personal integrity, and the techniques of harassment and innuendo. As safeguards for the editorial freedom of student publications the following provisions are necessary:

1. The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage.

2. Editors and managers of student publications should be protected from arbitrary suspension and removal because of student, faculty, administrative, or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers he subject to removal and then by orderly and prescribed procedures. The agency responsible for the appointment of editors and managers should be the agency responsible for their removal.

3. All university published and financed student publications should explicitly state on the editorial page that the opinions there expressed are not necessarily those of the college, university, or student body.

V. Off-Campus Freedom of Students

A. Exercise of Rights of Citizenship

College and university students are both citizens and members of the academic community. As citizens, students should enjoy the same freedom of speech, peaceful assembly, and right of petition that other citizens enjoy and, as members of the academic community, they are subject to the obligations which accrue to them by virtue of this membership. Faculty members and administrative officials should insure that institutional powers are not employed to inhibit such intellectual and personal development of students as is often promoted by their exercise of the rights of citizenship both on and off campus.

B. Institutional Authority and Civil Penalties

Activities of students may upon occasion result in violation of law. In such cases, institutional officials should be prepared to apprise students of sources of legal counsel and may offer other assistance. Students who violate the law may incur penalties prescribed by civil authorities, but institutional authority should never be used merely to duplicate the function of general laws. Only where the institution's interests as an academic community are distinct and clearly involved should the special authority of the institution be asserted. Students who incidentally violate institutional regulations in the course of their off-campus activity, such as those relating to class attendance, should be subject to no greater penalty than would normally be imposed. Institutional action should be independent of community pressure.

VI. Procedural Standards in Disciplinary Proceedings

In developing responsible student conduct, disciplinary proceedings play a role substantially secondary to example, counseling, guidance, and admonition.10 At the same time, educational institutions have a duty and the corollary disciplinary powers to protect their educational purpose through the setting of standards of scholarship and conduct for the students who attend them and through the regulation of the use of institutional facilities. In the exceptional circumstances when the preferred means fail to resolve problems of student conduct, proper procedural safeguards should be observed to protect the student from the unfair imposition of serious penalties.

The administration of discipline should guarantee procedural fairness to an accused student.11 Practices in disciplinary cases may vary in formality with the gravity of the offense and the sanctions which may be applied. They should also take into account the presence or absence of an honor code, and the degree to which the institutional officials have direct acquaintance with student life in general and with the involved student and the circumstances of the case in particular. The jurisdictions of faculty or student judicial bodies, the disciplinary responsibilities of institutional officials, and the regular disciplinary procedures, including the student's right to appeal a decision, should be clearly formulated and communicated in advance.12 Minor penalties may be assessed informally under prescribed procedures.

In all situations, procedural fair play requires that a student charged with misconduct be informed of the nature of the charges and be given a fair opportunity to refute them, that the institution not be arbitrary in its actions, and that there be provision for appeal of a decision. The following are recommended as proper safeguards in such proceedings when there are no honor codes offering comparable guarantees.

A. Standards of Conduct Expected of Students

The institution has an obligation to clarify those standards which it considers essential to its educational mission and its community life. These general behavioral expectations and the resultant specific regulations should represent a reasonable regulation of student conduct, but students should be as free as possible from imposed limitations that have no direct relevance to their education. Offenses should be as clearly defined as possible and interpreted in a manner consistent with the aforementioned principles of relevancy and reasonableness.13 Disciplinary proceedings should be instituted only for violations of standards of conduct formulated with significant student participation and published in advance through such means as a student handbook or a generally available body of institutional regulations.

B. Investigation of Student Conduct

1. Except under extreme emergency circumstances, premises occupied by students and the personal possessions of students should not be searched unless appropriate authorization has been obtained. For premises such as residence halls controlled by the institution, an appropriate and responsible authority should be designated to whom application should be made before a search is conducted. The application should specify the reasons for the search and the objects or information sought. The student should be present, if possible, during the search. For premises not controlled by the institution, the ordinary requirements for lawful search should be followed.

2. Students detected or arrested in the course of serious violations of institutional regulations, or infractions of ordinary law, should be informed of their rights.14 No form of harassment should be used by institutional representatives to coerce admissions of guilt or information about conduct of other suspected persons.

C. Status of Student Pending Final Action

Pending action on the charges, the status of a student should not he altered, or the student's right to he present on the campus and to attend classes suspended, except for reasons relating to the student's physical or emotional safety and well-being, or for reasons relating to the safety and well-being of other persons or property.

D. Hearing Committee Procedures

When the misconduct may result in serious penalties and if a penalized student questions the fairness of disciplinary action, that student should be granted, on request, the privilege of a hearing before a regularly constituted hearing committee. The following suggested hearing committee procedures satisfy the requirements of procedural due process in situations requiring a high degree of formality.

1. The hearing committee should include faculty members or students, or, if regularly included or requested by the accused, both faculty and student members. No member of the hearing committee who is otherwise interested in the particular case should sit in judgment during the proceeding.

2. The student should he informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularity, and in sufficient time to insure opportunity to prepare for the hearing.1

3. The student appearing before the hearing committee should have the right to he assisted in his or her defense by an adviser of the student's choice.

4. The burden of proof should rest upon the officials bringing the charge.

5. The student should be given an opportunity to testify, to present evidence and witnesses, and to hear and question adverse witnesses. In no case should the committee consider statements against the student unless he or she has been advised of their content and of the names of those who made them and has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

6. All matters upon which the decision may be based must be introduced into evidence at the proceeding before the hearing committee. The decision should be based solely upon such matters. Improperly acquired evidence should not be admitted.

7. In the absence of a transcript, there should be both a digest and a verbatim record such as a tape recording, of the hearing.

8. The decision of the hearing committee should be final, subject only to the student's right of appeal to the President or ultimately to the governing board of the institution. 17

The I967 joint Drafting Committee members and the associations that they represented are listed below:

Phillip Monypenny (chair): American Association of University Professors
Peter Armacost: Association of American Colleges
Ann Bromley: National Association of Women Deans and Counselors
Earle Clifford: National Association of Student Personnel Administrators
Harry Gideonse: Association of American Colleges
Edward Schwartz: United States National Student Association
Robert VanWaes: American Association of University Professors

The 1990-1992 task force members and the associations that they represented are listed below:

Richard H. Mullendore (chair): American College Personnel Association and National Orientation Directors Association
Pierre R. Barolette: United States Student Association
Ernst Benjamin: American Association of University Professors
Paula Brownlee: Association of American Colleges
William A. Bryan: American Association of University Administrators
Judy Corcillo: American Association for Higher Education

Renee DeVigne: Jesuit Association of Student Personnel Administrators
Donald D. Gehring: Association for Student Judicial Affairs
Gail Short Hanson: National Association for Women in Education
Jonathan Knight: American Association of University Professors
Mark Laponsky: American Association of University Professors
Roger Ludeman: American College Personnel Association
Mary Beth Maxwell: United States Student Association
Thomas Miller: National Association of Student Personnel Administrators
Connie Odems: American Association of Community and Junior Colleges
Halle VanderGaag: United States Student Association
Steven Zimmer: United States Student Association
References

Commentary. Listed herein is a sampling of the types of other sources of rules and regulations governing colleges or universities.

The term "cheating" includes, but is not limited to: (1) use of any unauthorized assistance in taking quizzes, tests, or examinations; (2) dependence upon the aid of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments; or (3) the acquisition, without permission, of tests or other academic material belonging to a member of the (College) (University) faculty or staff.

The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

Commentary. Cheating and plagiarism are the two most common types of academic misconduct. The courts' views about institutional decisions regarding such academic misconduct will be discussed in greater detail hereinafter.

Article II: Judicial Authority

1. The Judicial Advisor shall determine the composition of judicial bodies and Appellate Boards and determine which judicial body. Judicial Advisor and Appellate Board shall be authorized to hear each case.

2. The Judicial Advisor shall develop policies for the administration of the judicial program and procedural rules for the conduct of hearings which are not inconsistent with provisions of the Student Code.

3. Decisions made by a judicial body and/or Judicial Advisor shall be final, pending the normal appeal process.

4. A judicial body may be designated as arbiter of disputes within the student community in cases which do not involve a violation of the Student Code. All parties must agree to arbitration, and to be bound by the decision with no right of appeal.

Appendix B

MODEL STUDENT DISCIPLINARY CODE

ARTICLE I: DEFINITIONS (26)

1. The term [College) [University] means [name of institution].

2. The term "student" includes all persons taking courses at the College) [University], both full-time and part-time, pursuing undergraduate, graduate, or professional studies and those who attend post-secondary educational institutions other than [name of institution] and who reside in [College] [University] residence halls. Persons who are not officially enrolled for a particular term but who have a continuing relationship with the [College][University] are considered "students."

Commentary. This definition is intended to include persons not enrolled for a particular term but who enroll for courses from time to time, perhaps toward a degree. Such persons would be expected to honor the Student Code even between periods of their actual enrollment.

3. The term "faculty member" means any person hired by the [College] [University] to conduct classroom activities.

4. The term "[College] [University] official" includes any person employed by the [College] [University], performing assigned administrative or professional responsibilities.

5. The term "member of the [College] [University]community" includes any person who is a student, faculty member, [College] [University] official or any other person employed by the [College] [University]. A person's status in a particular situation shall be determined by [title of appropriate college or university administrator]. (27)

6. The term "[College] [University] premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the [College] [University] (including adjacent streets and sidewalks).

7. The term "organization" means any number of persons who have complied with the formal requirements for [College] [University] [recognition/registration].

8. The term 'judicial body' means any person or persons authorized by the [title of administrator identified in Article I, number 13] (28) to determine whether a student has violated the Student Code and to recommend imposition of sanctions.

Commentary. A 'judicial body', sometimes called a "hearing board", need not be comprised of any particular number of persons. Concerns recur about the composition of such bodies. An impartial decision maker is essential to due process. (29) Courts have recognized, however, that in the college or university context it is often impossible to assemble a group of people who have not in some way heard of the charges at issue or who do not know the person(s) involved. (30) Frequently, "judicial bodies" which determine whether the Student Code has been violated include both students and faculty members or administrators. In this model, the code administrator defines the composition of hearing boards, but if the history or social system on campus dictates otherwise, the composition may be defined in more detail in the Student Code.

9. The term "Judicial Advisor" means a [College][University] official authorized on a case-by-case basis by the [title of administrator identified in Article I, number 13] to impose sanctions upon students found to have violated the Student Code. The [title of administrator identified in Article I, number 13] may authorize a judicial advisor to serve simultaneously as a judicial advisor and the sole member or one of the members of a judicial body. Nothing shall prevent the [title of administrator identified in Article I, number 13] from authorizing the same judicial advisor to impose sanctions in all cases.

Commentary. Just as courts have recognized that persons comprising a judicial body may have prior knowledge of the events at issue or the person(s) involved, they have recognized that it is sometimes impossible on a college campus to avoid having one person occupy two roles with respect to disciplinary proceedings.(31) While it is not improper, whenever possible the college or university should avoid putting someone in the position of "wearing two hats". If the size of the institution's staff permits, it is decidedly preferable to have the functions of informal investigating and/or mediating separated from that of determining whether a violation has occurred and setting the sanction. Admittedly, such separation can be achieved more easily at large institutions. Thus, this Model recognizes the advisability of separating the functions when possible, while preserving the flexibility to combine functions-which usually will be a fact of life at smaller institutions. A student challenging a hearing board's decision on the grounds of bias must, in order to win the case, prove actual bias or that the board acted improperly.(32) This model anticipates that a college or university official will determine sanctions after a violation has been found. In some systems sanctions are set by students.

10. The term "Appellate Board" means any person or persons authorized by the [title of administrator identified in Article I, number 13] to consider an appeal from a judicial body's determination that a student has violated the Student Code or from the sanctions imposed by the Judicial Advisor.

11. The term "shall" is used in the imperative sense.

12. The term "may" is used in the permissive sense.

13. The [title of appropriate administrator] is that person designated by the [College] [University] President to be responsible for the administration of the Student Code.

14. The term "policy" is defined as the written regulations of the [College] [University] as found in, but not limited to, the Student Code, Residence Life Handbook, and Graduate/Undergraduate Catalogs.

Commentary. Listed herein is a sampling of the types of other sources of rules and regulations governing colleges or universities.

The term "cheating" includes, but is not limited to: (1) use of any unauthorized assistance in taking quizzes, tests, or examinations; (2) dependence upon the aid of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments; or (3) the acquisition, without permission, of tests or other academic material belonging to a member of the (College) (University) faculty or staff.

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Commentary. Cheating and plagiarism are the two most common types of academic misconduct. The courts' views about institutional decisions regarding such academic misconduct will be discussed in greater detail hereinafter.

ARTICLE II: JUDICIAL AUTHORITY

1. The Judicial Advisor shall determine the composition of judicial bodies and Appellate Boards and determine which judicial body. Judicial Advisor and Appellate Board shall be authorized to hear each case.

2. The Judicial Advisor shall develop policies for the administration of the judicial program and procedural rules for the conduct of hearings which are not inconsistent with provisions of the Student Code.

3. Decisions made by a judicial body and/or Judicial Advisor shall be final, pending the normal appeal process.

4. A judicial body may be designated as arbiter of disputes within the student community in cases which do not involve a violation of the Student Code. All parties must agree to arbitration, and to be bound by the decision with no right of appeal.

ARTICLE III: PROSCRIBED CONDUCT

A. Jurisdiction of the [College) (University)Generally, [College] [University] jurisdiction and discipline shall be limited to conduct which occurs on [College) (University) premises or which adversely affects the [College] [University] Community and/or the pursuit of its objectives.

Commentary. The college or university should state in general terms the conduct which the institution intends to reach. A college or university has jurisdiction to punish a student for activities which take place off-campus when those activities adversely affect the interests of the college or university community. School officials have wide latitude in determining whether an activity adversely affects the interests of the university community. (35)

Under this Model Student Code, when an activity occurs off-campus, it would be the responsibility of the administrator designated in Article I, number 13, to determine whether college or university jurisdiction should be asserted. (36) Utilizing this procedure on a case-by-case basis allows the institution to consider the unique facts of each situation without the impossible problem of drafting language to cover every possible situation.

B. Conduct-Rules and Regulations

Any student found to have committed the following misconduct is subject to the disciplinary sanctions outlined in Article IV:

1. Acts of dishonesty, including but not limited to the following: a. Cheating, plagiarism, or other forms of academic dishonesty. b. Furnishing false information to any [College) [University] official, faculty member or office. c. Forgery, alteration, or misuse of any (College) [University] document, record, or instrument of identification. d. Tampering with the election of any [College] [University] recognized student organization.

2. Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other [College] [University] activities, including its public-service functions on or off campus, or other authorized non- [College] [University] activities, when the act occurs on [College] [University] premises.

3. Physical abuse, verbal abuse, threats, intimidation, harassment, coercion and/or other conduct which threatens or endangers the health or safety of any person.

4. Attempted or actual theft of and/or damage to property of the [College] [University] or property of a member of the [College] [University] community or other personal or public property.

5. Hazing, defined as an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization. (50)

6. Failure to comply with directions of [College) [University] officials or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

7. Unauthorized possession, duplication or use of keys to any [College] [University) premises or unauthorized entry to or use of [College) [University] premises.

8. Violation of published [College) [University] policies, rules or regulations.

9. Violation of federal, state or local law on [College] [University] premises or at [College] [University] sponsored or supervised activities.

10. Use, possession or distribution of narcotic or other controlled substances except as expressly permitted by law.

11. Use, possession or distribution of alcoholic beverages except as expressly permitted by the law and [College] [University] regulations, or public intoxication.

12. Illegal or unauthorized possession of firearms, explosives, other weapons, or dangerous chemicals on [College] [University] premises.

13. Participation in a campus demonstration which disrupts the normal operations of the [College] [University] and infringes on the rights of other members of the [College] [University] community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area; intentional obstruction which unreasonably interferes with freedom of movement, either pedestrian or vehicular, on campus.

14. Obstruction of the free flow of pedestrian or vehicular traffic on [College] [University] premises or at [College-] [University-] sponsored or supervised functions.

15. Conduct which is disorderly, lewd, or indecent; breach of peace; or aiding, abetting, or procuring another person to breach the peace on [College] [University] premises or at functions sponsored by, or participated in by, the [College] [University).

16. Theft or other abuse of computer time, including but not limited to:

a. Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose. b. Unauthorized transfer of a file. c. Unauthorized use of another individual's identification and password. d. Use of computing facilities to interfere with the work of another student, faculty member or [College] (University] Official. e. Use of computing facilities to send obscene or abusive messages. f. Use of computing facilities to interfere with normal operation of the (College] [University] computing system.

17. Abuse of the Judicial System, including but not limited to:

a. Failure to obey the summons of a judicial body or [College] [University] official. b. Falsification, distortion, or misrepresentation of information before a judicial body. c. Disruption or interference with the orderly conduct of a judicial proceeding. d. institution of a judicial proceeding knowingly without cause. e. Attempting to discourage an individual's proper participation in, or use of, the judicial system. f. Attempting to influence the impartiality of a member of a judicial body prior to, and/or during the course of, the judicial proceeding. g. Harassment (verbal or physical) and/or intimidation of a member of a judicial body prior to, during, and/or after a judicial proceeding. h. Failure to comply with the sanction(s) imposed under the Student Code. i. influencing or attempting to influence another person to commit an abuse of the judicial system.

Commentary. Colleges or universities are, of course, free to include in their lists of misconduct as many types of acts as they choose, within certain limitations. The list of acts of misconduct which constitute violations of the Student Code should give students fair notice of the types of conduct which may result in sanctions. The college or university should, however, be careful to emphasize that the list is not all-inclusive. Otherwise, the college or university may be held to a contract, inadvertently created, to punish only misconduct listed, and none other. (50)

Courts tend to give college and university officials much greater freedom concerning purely academic decisions than they do concerning purely disciplinary decisions. (50) Academic-misconduct cases involving cheating or plagiarism, for example, present a unique hybrid of academic and disciplinary decisions. (50) Because several courts have categorized cases of academic misconduct as disciplinary, rather than academic, (50) the authors suggest that institutions classify such "academic misconduct", as requiring the same procedures as cases involving purely disciplinary matters.(50) Academic misconduct

may also be grounds for academic sanctions, such as the imposition of a lower grade. This system must be dove-tailed with the institutional process for student review of academic sanctions. Even if a faculty member imposes an academic sanction for an academic offense, the authors recommend that the student have the right to have the conduct reviewed under the Student Code. If these procedures produce a conclusion that the misconduct occurred, the Student Code procedures can uphold, increase, or reduce the sanction. If no violation is found, the sanction imposed by the faculty member must be lifted.

Concerning items number three, thirteen, fifteen and seventeen, the college or university must ensure that regulations which may infringe upon the right of free speech do not violate the first amendment because of overbreadth or vagueness. (50) They must also ensure that it is not an abuse of the judicial system (i.e., a violation of item number sixteen) for persons to attend the hearing but to refuse to testify by asserting their fifth-amendment right not to incriminate themselves. (50) A person may assert the privilege against self-incrimination as to possible criminal exposure during a civil proceeding. (50) In the college disciplinary setting, the student may remain silent, and such silence should not be used against the student, (50) but a violation of the Student Code may nevertheless be found based upon the other evidence presented.

C. Violation of Law and [College] [University] Discipline

1. If a student is charged only with an off-campus violation of federal, state, or local laws, but not with any other violation of this Code, disciplinary action may be taken and sanctions imposed for grave misconduct which demonstrates flagrant disregard for the [College] [University] community. in such cases, no sanction may be imposed unless the student has been found guilty in a court of law or has declined to contest such charges, although not actually admitting guilt (e.g., "no contest" or "nolo contendere").

Commentary. The college or university may punish off-campus violations of the law if such misconduct affects the college or university community. (50)

2. **[Alternative A]**
[College) [University] disciplinary proceedings may be instituted against a student charged with violation of a law which is also a violation of this Student Code, for example, if both violations result from the same factual situation, without regard to the pendency of civil litigation in court or criminal arrest and prosecution. Proceedings under this Student Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

[Alternative B]
If a violation of law which also would be a violation of this Student Code is alleged, proceedings under this Student Code may go forward against an offender who has been subjected to civil prosecution only if the [College] [University) determines that its interest is clearly distinct from that of the community outside the [College] [University). Ordinarily, the [College] [University] should not impose sanctions if public prosecution of a student is anticipated, or until law enforcement officials have disposed of the case. (50)

Commentary. A college or university may take student disciplinary action before criminal charges arising out of the same facts are resolved. (50) There are two basic approaches to the recurring dilemma of how a college or university should proceed when a student is accused not only of violating school regulations, but also of breaking the law. Alternative A is the pro-active approach, in which the institution has reserved the authority to take action under the Student Code in all such situations. A college or university may choose this approach because it does not wish to trivialize its code. To postpone the use of its disciplinary code and system of hearings and appeals in those cases involving criminal conduct would lead, in the words of one court, to an "absurd situation:" A student who violated a rule or regulation short of committing a crime receives immediate discipline, while a student who committed a more serious offense is entitled to attend school without immediate disciplinary action. (51) Alternative B illustrates the other approach. Although such an approach is not often admitted explicitly, it is not uncommon. It does, however, lead to a Student Code which deals only with minor offenses. The authors recommend Alternative A.

3. When a student is charged by federal, state or local authorities with a violation of law, the [College] [University] will not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also the subject of a proceeding before a judicial body under the Student Code, however, the [College] [University] may advise off-campus authorities of the existence of the Student Code and of how such matters will be handled internally within the [College] [University] community. The [College] [University] will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators. individual students and faculty members, acting in their personal capacities , remain free to interact with governmental representatives as they deem appropriate.

Commentary. Counsel for the college or university should establish a solid relationship with the local prosecuting attorney in anticipation of such situations. The college or university attorney should educate the prosecuting attorney about the institution's student code and its general philosophy regarding discipline. By doing this, the institution may better coordinate its efforts with that of the prosecuting attorney when a disciplinary problem overlapping criminal charges arises. In addition, the prosecuting attorney who understands that the college or university will handle matters appropriately may bypass

intervention, choosing instead to allow the institution to handle the situation. Finally, familiarizing the prosecuting attorney with the student code before an incident arises helps avoid media errors, subsequent retractions and negative publicity when an incident arises. This area requires a delicate balance, good judgment, and an appreciation of the separate rules of student discipline and law enforcement. College officials must take care not to attempt, or appear to attempt, to influence prosecutorial decision making. Although the campus and criminal systems must remain distinct, with neither dictating to the other, it is nevertheless important to have a clear line of communication.

Besides working with the prosecuting attorney, the college or university attorney should establish a relationship with the attorney for the accused student. This is important because the university attorney can help the defense attorney make an informed decision as to whether the accused student should submit to the school's disciplinary proceedings. For example, if the accused student is found to have violated university rules, university, not criminal, sanctions will be imposed. These sanctions most likely will be less severe than criminal sanctions. Complainants who feel vindicated and satisfied with the result of the institutional disciplinary hearing may be inclined to drop the criminal charges. In any case, the institution's representative must be mindful of a fair result for both the student who has alleged a violation of the Student Code and the alleged violator.
This in turn will alleviate the burden on the prosecuting attorney, whose offices are traditionally understaffed and overworked. Moreover, the student "victim" will be able to present testimony in an atmosphere less antagonistic than criminal court.

ARTICLE IV: JUDICIAL POLICIES

A. Charges and Hearings

1. Any member of the [College) [University] community may file charges against any student for misconduct. Charges shall be prepared in writing and directed to the Judicial Advisor responsible for the administration of the [College] [University] judicial system. Any charge should be submitted as soon as possible after the event takes place, preferably within [specified amount of time].

Commentary. This section not only describes who may file charges, but also requires that such charges be in writing and that they all be submitted to the same person. Such measures are desirable because: (1) they ensure that college or university officials can immediately assess the gravity of each complaint; and (2) they serve to provide notice in an orderly fashion.52 The use of a standard form for charges will ensure the receipt of all the necessary information.53 Practice varies widely concerning the length of limitations periods. For example, at Westminster College complainants are asked to file charges within forty-eight (50) hours.54 At Pratt Institute, charges of discriminatory treatment

must be submitted within twenty-eight (28) days of the date the complainant first attempted to resolve the matter, which must be done within ninety (90) days of the incident. Finally, at Northwestern University, complainants have one year during which to file charges.59

2. The Judicial Advisor may conduct an investigation to determine if the charges have merit and/or if they can be disposed of administratively by mutual consent of the parties involved on a basis acceptable to the Judicial Advisor. Such disposition shall be final and there shall be no subsequent proceedings. If the charges cannot be disposed of by mutual consent, the Judicial Advisor may later serve in the same matter as the judicial body or a member thereof.

Commentary. As noted previously,57 courts have recognized that it is not possible in the college or university setting to ensure that the participants in the disciplinary process have not had prior contact with the student(s) involved or prior knowledge of the events which are the subject of the proceeding. Where staffing permits, it is preferable to separate the administrative and judicial functions.

3. All charges shall be presented to the accused student in written form. A time shall be set for a hearing, not less than five nor more than fifteen calendar days after the student has been notified. Maximum time limits for scheduling of hearings may be extended at the discretion of the Judicial Advisor.

Commentary. Notice and an opportunity to be heard are essential to all student disciplinary proceedings, at least in the public college and university settings.55 Requiring that the accused student receive written notice of the charge ensures that the accused student receives adequate notice of the alleged violations. Such notice should be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. `,59 Further, there is no bright-line rule governing how far in advance of a hearing notice should be given.60 Indeed, some courts have indicated that notice of charges may be given at the same time the student has an opportunity to defend against those charges.6 Nevertheless, it seems fairer to give some reasonable amount of time to allow accused students to prepare their defenses. Proper notice may benefit the institution if a student challenges its actions.92 The institution must, however, be sure to follow its own rules once it establishes an amount of time which is to pass between notice and the hearing.63 Granting the Judicial Advisor discretion to extend the maximum time limits permits the institution flexibility in cases in which examination periods, breaks and holidays disrupt the time at which hearings would otherwise be scheduled. Some institutions may wish to deal with break and/or holiday issues more explicitly by providing in their codes for dates certain to be used in such situations. For example, a college or university may wish to provide that, in cases in which an examination period or break intervenes between the time of notice and the hearing date, hearings always will be held on the first day on which classes are again in session.

4. Hearings shall be conducted by a judicial body according to the following guidelines:

a. Hearings normally shall be conducted in private. At the request of the accused student, and subject to the discretion of the chairperson, a representative of the student press may be admitted, but shall not have the privilege of participating in the hearing.

b. Admission of any person to the hearing shall be at the discretion of the judicial body and/or its Judicial Advisor.

c. In hearings involving more that one accused student, the chairperson of the judicial body, in his or her discretion, may permit the hearings concerning each student to be conducted separately.

d. The complainant and the accused have the right to be assisted by any advisor they choose, at their own expense. The advisor may be an attorney. The complainant and/or the accused is responsible for presenting his or her own case and, therefore, advisors are not permitted to speak or to participate directly in any hearing before a judicial body.

e. The complainant, the accused and the judicial body shall have the privilege of presenting witnesses, subject to the right of cross examination by the judicial body.

f. Pertinent records , exhibits and written statements may be accepted as evidence for consideration by a judicial body at the discretion of the chairperson.

g. All procedural questions are subject to the final decision of the chairperson of the judicial body.

h. After the hearing, the judicial body shall determine (by majority vote if the judicial body consists of more than one person) whether the student has violated each section of the Student Code which the student is charged with violating.

i. The judicial body's determination shall be made on the basis of whether it is more likely than not that the accused student violated the Student Code.

Commentary. The law requires no particular form of hearing. 64 For two reasons, however, the institution should establish guidelines pursuant to which hearings are to be conducted. First, doing so will ensure that the institution always treats students accused of misconduct evenhandedly. That is, a college or university can feel safe in knowing that, as long as the student disciplinary board follows the procedures set forth in its code, each accused student will receive the same treatment. Thus, there is less opportunity for any student to complain of unequal treatment. Second, establishing such guidelines in advance will avert snap decisions concerning such issues as whether to permit a student to have counsel or whether the hearing should be public.

This compendium of hearing guidelines incorporates the following legal principles: First, the hearing need not be open to the public.95 Second, neither the Federal Rules of Evidence nor any state's rules of evidence apply in student disciplinary proceedings.96 Third, although the courts are split on the issue,67 a student need not be permitted to be represented by counsel at most student disciplinary hearings.69

There are two possible exceptions to this rule: First, a public institution's disciplinary board may be considered a state agency in some situations. Being deemed a state agency may bring into play certain state administrative agency laws, which may require representation by an attorney.69 Second, if criminal charges are either pending or potential, the college or university must permit
the student to have counsel.70 Even in these cases, however, counsel may be restricted to an advisory role.71 It is not required that either students or counsel be given the opportunity to cross-examine witnesses. Cross-examination by the disciplinary hearing board is sufficient.72 A smaller school may wish to institute either an arbitration or a mediation requirement prior to reaching the hearing stage.73 Such an option is acceptable because the concept of due process is flexible, requiring no more than is necessary to provide fair notice and an opportunity to be heard.74 In other words, in some cases a hearing is not required; a meeting between the students involved and college administrators suffices, as long as accused students are informed of the charges and given an opportunity to tell their side of the story.

By contrast, larger schools may not want to require such an initial meeting because such meetings could consume all of the administrator's time with little benefit. Local experience will dictate whether it is effective to attempt to resolve alleged Student Code violations through such a meeting.

This Model Student Code advocates using a "more likely than not" or "preponderance of the evidence" standard for disciplinary decision making. This is because the "beyond a reasonable doubt" standard applied in criminal cases is too demanding for college disciplinary proceedings.75 Courts review disciplinary decisions of colleges or universities under a "substantial evidence" standard. In doing so, courts generally examine whether there was enough evidence at the hearing to demonstrate that it was `more likely than not'

that the accused student violated the Student Code, or whether a "preponderance of the evidence" demonstrated such violation-the same standard applied in most civil cases.76 Some codes use a "clear and convincing" standard, but such a standard is not common.77

5. There shall be a single verbatim record, such as a tape recording, of all hearings before a judicial body. The record shall be the property of the [College] [University].

Commentary. The purpose of this provision is twofold. First, it assures all parties that a record will be made of the hearing.79 Second, it establishes that such record is the property of the institution.

In some cases, a student may request permission to make a record of the proceedings.79 An institution may not wish to permit a student to do so because, for example, it may not want its students replaying tapes of college disciplinary proceedings as a form of entertainment. The college or university may grant student requests to make a record of the proceeding if it wishes, perhaps on the condition that the tape nevertheless become the school's property and not be removed from its control. In any event, a provision requiring that a record be kept can shield the institution from liability should it refuse the student's request.90

6. Except in the case of a student charged with failing to obey the summons of a judicial body or [College] [University] official, no student may be found to have violated the Student Code solely because the student failed to appear before a judicial body. In all cases, the evidence in support of the charges shall be presented and considered.

Commentary. "Judgment by default" is a rather harsh penalty to impose upon a student accused of violating the disciplinary code. It is also a good way to ask for a lawsuit.

B. Sanctions

1. The following sanctions may be imposed upon any student found to have violated the Student Code:

   a. Warning-A notice in writing to the student that the student is violating or has violated institutional regulations.

   b. Probation-A written reprimand for violation of specified regulations. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating any institutional regulation(s) during the probationary period.

c. Loss of Privileges-Denial of specified privileges for a designated period of time.

d. Fines-Previously established and published fines may be imposed.

e. Restitution-Compensation for loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.

f. Discretionary sanctions-Work assignments, service to the [College] [University] or other related discretionary assignments (such assignments must have the prior approval of the Judicial Advisor).

g. Residence Hall Suspension-Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

h. Residence Hall Expulsion-Permanent separation of the student from the residence halls.

i. [College] [University] suspension-Separation of the student from the [College] [University] for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

j. [College] [University] Expulsion-Permanent separation of the student from the [College] [University].91

Commentary. Colleges and universities may, within certain limitations,92 authorize as many types of sanctions as they wish. This section gives the institution maximum flexibility by permitting the Judicial Advisor to impose any sanction for any infraction of the Student Code. An alternative approach is to enumerate those offenses carrying the more serious sanctions (i.e., expulsion and suspension), and to allow the Judicial Advisor to choose among the remaining sanctions in punishing other offenses.83

2. More than one of the sanctions listed above may be imposed for any single violation.

3. Other than [College] [University] expulsion, disciplinary sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's confidential record. Upon graduation, the student's confidential record may be expunged of disciplinary actions other than residence-hall expulsion, [College] [University] suspension or [College] [University] expulsion, upon application to the Judicial Advisor. Cases involving the imposition of sanctions other than residence-hall expulsion, [College] [University] suspension or [College] [University] expulsion shall be expunged from the student's confidential record [insert preferred number] years after final disposition of the case.

Commentary. The maintenance of student records is regulated by the Buckley Amendment.94 The Buckley Amendment does not mandate that records of disciplinary action be treated as this section provides, but if a college or university already has a policy concerning such records, school officials may wish to incorporate that policy into the Student Code. Drafters of student codes should investigate their own state's laws to determine whether any privacy acts affect this issue.85 When determining the institution's preferred course of action, student-code drafters should realize that disclosure of severe disciplinary actions could affect the student's ability to enter other institutions.56 This would occur only if such news "imposed on [the student) a stigma or other disability that fore-closed his freedom to take advantage of other . . . opportunities."87 Whether any sanction short of expulsion should appear on an academic transcript and, even then, whether the reason for expulsion should appear, are issues meriting careful consideration.

4. The following sanctions may be imposed upon groups or organizations:

   a. Those sanctions listed above in Section B 1, a through e.
   b. Deactivation-Loss of all privileges, including [College] [University] recognition, for a specified period of time.

Commentary. When a student organization engages in some act of misconduct, the college or university may take action not only against the student(s) involved, but also against the organization itself. This procedure does not violate the double jeopardy clause of the Constitution 99 for two reasons. First, the double jeopardy clause applies only to criminal, not civil, proceedings.89 Proceedings under a school's Student Code are not criminal proceedings.98 Furthermore, the actors (student(s) and organization) are separate offenders. Punishing each of them for the same act is not punishing the same offender twice for one act of misconduct. Similarly, it does not violate the double jeopardy clause for the same student to be subjected to both criminal and student-code (civil) sanctions for the same misconduct.92

5. In each case in which a judicial body determines that a student has violated the Student Code, the sanction(s) shall be determined and imposed by the Judicial Advisor. in cases in which persons other than or in addition to the Judicial Advisor have been authorized to serve as the judicial body, the recommendation of all members of the judicial body shall be considered by the Judicial Advisor in determining and imposing sanctions. The Judicial Advisor is not limited to sanctions recommended by members of the judicial body. Following the hearing, the judicial body and the Judicial Advisor shall advise the accused in writing of its determination and of the sanction(s) imposed, if any.

Commentary. Imposition of sanctions by the Judicial Advisor ensures some consistency among the sanctions meted out over time. A college or university may choose to allow students, rather than a college or university official, to impose sanctions in each case.93 Such a choice is not unusual. It may be more equitable, however, to have the Judicial Advisor choose the punishment in all situations, so as to avoid putting students who sit on the judicial body in the awkward position of imposing a harsh punishment on a peer.

C. Interim Suspension

In certain circumstances, the [title of administrator identified in Article I, number 13], or a designee, may impose a [College] [University] or residence-hall suspension prior to the hearing before a judicial body.

1. Interim suspension may be imposed only: a) to ensure the safety and well-being of members of the [College] [University] community or preservation of [College] [University] property; b) to ensure the student's own physical or emotional safety and well-being; or c) if the student poses a definite threat of disruption of or interference with the normal operations of the [College] [University].

2. During the interim suspension, students shall be denied access to the residence halls and/or to the campus (including classes) and or all other [College] [University] activities or privileges for which the student might otherwise be eligible, as the [title of administrator identified in Article I, number 13] or the Judicial Advisor may determine to be appropriate.

Commentary. It is permissible to impose an interim suspension in certain instances.94 The requisite notice and hearing process, however, should follow as soon as is practicable.95

D. Appeals

1. A decision reached by the judicial body or a sanction imposed by the Judicial Advisor may be appealed by accused students or complainants to an Appellate Board within five (5) school days of the decision. Such appeals shall be in writing and shall be delivered to the Judicial Advisor or his or her designee.

Commentary. This is another point at which it may be wise to grant students more rights than they might otherwise have. Although there is some authority for the proposition that students need not be given the right to appeal from a decision rendered as a result of a

hearing,96 providing an appellate process promotes an image of fairness. Further enhancing the image of fairness, this model affords not only the accused student but also the complainant a right to appeal. Particulars, such as the amount of time within which to permit appeals, may vary from school to school.

2. Except as required to explain the basis of new evidence, an appeal shall be limited to review of the verbatim record of the initial hearing and supporting documents for one or more of the following purposes:

   a. To determine whether the original hearing was conducted fairly in light of the charges and evidence presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and present evidence that the Student Code was violated, and giving the accused student a reasonable opportunity to prepare and to present a rebuttal of those allegations.

   b. To determine whether the decision reached regarding the accused student was based on substantial evidence, that is, whether the facts in the case were sufficient to establish that a violation of the Student Code occurred.

   c. To determine whether the sanction(s) imposed were appropriate for the violation of the Student Code which the student was found to have committed.

   d. To consider new evidence, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such evidence and/or facts were not known to the person appealing at the time of the original hearing.

Commentary. The appellate body should review the hearing board's decision in order to determine whether it was supported by substantial evidence.97 Substantial evidence is "`more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"98 In making such a determination, the Appellate Board should not substitute its judgment for the judgment of the judicial body. Instead, it should review the judicial body's determination only to see whether there was evidence before the judicial body which supported the result reached below.88

3. If an appeal is upheld by the Appellate Board, the matter shall be remanded to the original judicial body and Judicial Advisor for re-opening of the hearing to allow reconsideration of the original determination and/or sanction(s).

Commentary. A smaller institution may wish to permit yet another step in the appeal process by providing that a person disagreeing with the decision of the Appellate Board may appeal to the president or other top-ranking official. In such cases, the institution may want to provide that the decision of the president shall be "final and binding." Doing

so would open the door to arguing that, as in labor disputes in which the parties have agreed that disputes be submitted to binding arbitration, the decision of the president as "arbitrator" should not be disturbed by a court as long as it is reasonable and derives its essence from the student code.

4. In cases involving appeals by students accused of violating the Student Code, review of the sanction by the Appellate Board may not result in more severe sanction(s) for the accused student. Instead, following an appeal, the (title of administrator identified in Article I, number 13] may, upon review of the case, reduce, but not increase, the sanctions imposed by the Judicial Advisor.

Commentary. Providing that an appeal may result in decreased, but not increased, sanctions ensures that accused students will feel free to exercise their rights of appeal. Students may be deterred from appealing if they fear that sanctions may be increased as a result. Granting a right of appeal under conditions which actually deter such appeals only serves to lessen the perception of fairness in the process.

5. In cases involving appeals by persons other than students accused of violating the Student Code, the [title of administrator identified in Article I, number 13] may, upon review of the case, reduce or increase the sanctions imposed by the Judicial Advisor or remand the case to the original judicial body and Judicial Advisor.

Commentary. To grant a complaining student a right of appeal would be of little value without this provision. In cases in which a complaining student appeals a decision in which no violation was found, this provision is not necessary. In cases in which a complaining student is appealing only the sanction imposed against a student found to have violated the student code, however, the complaining student presumably believes that a stiffer sanction should be imposed.

In most cases in which the administrator believes that the appeal of a person other than the accused student should be granted, the remedy should be to remand the case to the original judicial body and Judicial Advisor. That body or person may further consider the evidence and either render a new decision or better explain the basis for the original decision.

ARTICLE V: INTERPRETATION AND REVISION

A. Any question of interpretation regarding the Student Code shall be referred to the [title of administrator identified in Article I, number 13] or his or her designee for final determination.

B. The Student Code shall be reviewed every [--] years under the direction of the Judicial Advisor.

Commentary. Every Student Code should be reviewed periodically, at least every three years. Specifying some "normal" period for review may help ensure that such a review is done.

Appendix C

DISCIPLINARY COUNSELING SURVEY

THIS SECTION (PAGES 1-2) FOR STUDENT SERVICE VICE PRESIDENT, DEAN OR JUDICIAL OFFICER ONLY

ANSWER FOR YOUR CAMPUS. EACH CAMPUS OF AN INSTITUTION SHOULD COMPLETE A SEPARATE SURVEY.

DEFINITION

Disciplinary counseling if defined as developmental action available for college administration to use with students whose conduct has come under the jurisdiction of the institution's disciplinary authority. For purposes of this survey, disciplinary counseling is mandatory and occurs in the counseling center/service at the request of the person or persons responsible for disciplinary affairs within the institution.

This survey was originally created for directors of counseling centers/services at 4-year institutions. It has been modified to be relevant for community colleges.

DEMOGRAPHICS

1. Name of Campus/Institution _____

2. Category of Campus/Institution
   a. 2-year residential ____
   b. 2-year non-residential ____

   a. 2-year urban ____
   b. 2-year suburban ____
   c. 2-year rural ____

3. Size of Campus/Institution (FTE)
   a. less than 2000 FTE ____
   b. 2000-3900 FTE ____
   c. 4000-5900 FTE ____
   d. 6000-8000 FTE ____
   e. more than 8000 FTE ____

4. Counseling Center/Service Professional Staff (FTE)
Doctoral staff
Psychologist ____
Counselor ____
Other ____
Master's staff ____
Bachelor's staff ____

5. Counseling Center/Service Director
a. Years in present position ____
b. Academic degree ____
c. Gender ____

REFERRALS

1. Has the number of disciplinary cases referred to you changed in the past five years?
Yes ____ No ____

If the change has been an increase, how large has the five-year increase been? ____% Increase

Do you expect a change in the next five years?
Yes ____ No ____

2. If you have experienced an increase in the last five years, to what factors do you attribute the increase in the number of disciplinary cases referred to you?

_____
_____
_____
_____

3. What type of referrals in the last five years have you referred to your counseling staff for disciplinary counseling?
Alcohol ____%
Drug abuse ____%
Conflict behavior (student/student, student/staff) ____%
Racist actions ____%
Sexual harassment ____%
Sexual assault/date rape ____%
Suicidal behavior ____%
Theft ____%
Vandalism ____%
Violence ____%
Hate crime/speech ____%
Gang activity ____%
Other ____%
Please explain "other"
_____
_____

4. When do you refer students to outside agencies for therapeutic counseling rather than to your counseling center/service?

_____

_____

_____

5. Do counseling staff sit as members on student discipline boards (judicial boards)?
Yes ____ No ____

THIS SECTION (PAGES 3-5) FOR COUNSELING CENTER/SERVICE DIRECTORS ONLY

ANSWER FOR YOUR CAMPUS. EACH CAMPUS OF AN INSTITUTION SHOULD COMPLETE A SEPARATE SURVEY.

DEFINITION

Disciplinary counseling if defined as developmental action available for college administration to use with students whose conduct has come under the jurisdiction of the institution's disciplinary authority. For purposes of this survey, disciplinary counseling is mandatory and occurs in the counseling center/service at the request of the person or persons responsible for disciplinary affairs within the institution.

This survey was originally created for directors of counseling centers/services at 4-year institutions. It has been modified to be relevant for community colleges.

REFERRALS

1. Has the number of disciplinary counseling cases referred to your center/service changed in the past five years?
Yes ____ No ____

If the change has been an increase, how large has the five-year increase been? ____% Increase

Do you expect a change in the next five years?
Yes ____ No ____

If you expect an increase, how large an increase are you expecting in the next five years?
____% Increase

2. If you have experienced an increase in the last five years, to what factors do you attribute the increase in the number of disciplinary cases referred to your center/service?

_____
_____
_____
_____

3. What type of referrals have been made in the last five years for students referred to your center/service for disciplinary counseling? Indicate approximate percent:

Alcohol ____%
Drug abuse ____%
Conflict behavior (student/student, student/staff) ____%
Racist actions ____%
Sexual harassment ____%
Sexual assault/date rape ____%
Suicidal behavior ____%
Theft ____%
Vandalism ____%
Violence ____%
Hate crime/speech ____%
Gang activity ____%
Other ____%

Please explain "other"

_____
_____

4. From what sources (e.g. residence halls, dean of students) are referrals to your office for disciplinary counseling usually made?

_____
_____

5. What are the typical goals of disciplinary counseling? If goals are specific to a particular type (e.g., alcohol), use the most frequent type in addressing goals.

_____
_____
_____
_____

6. What books or other reference material would you recommend for counseling staff in working with disciplinary referrals?

_____
_____
_____

7. Name the most important article that helped define your service's framework for disciplinary counseling:

_____
_____
_____

8. Does your institution make re-admission of a dismissed student contingent on seeing a counselor for disciplinary counseling for a designated period or number of sessions?
Yes ____ No ____

9. What information does the referring person (dean) expect from counseling session(s)?

_____
_____
_____
_____

10. What is the follow-up of the referring person?

_____
_____
_____
_____

11. Are releases signed by students in order to relate outcome of sessions (not content) to the referring person?
Yes ____ No ____

12. At what point are students referred to outside agencies for:
a. Diagnosis? _____
_____
_____

b. Therapeutic counseling? _____
_____
_____

ISSUES

13. What kinds of organizational conflicts and/or ethical dilemmas does disciplinary counseling present to your center/service?

_____
_____
_____
_____

14. How has your counseling staff responded to these dilemmas?

_____
_____
_____
_____

15. In your opinion, should community college counselors do disciplinary counseling?
Yes ____ No ____

16. Under what conditions should disciplinary counseling be part of the counseling staff's responsibility?

_____
_____
_____
_____

17. What are the three most important issues facing your services and your college related to disciplinary counseling?

_____
_____
_____
_____
_____